

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

### **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 8-23-01.
  - b. The request was received on 8-13-02.

### **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. TWCC 60 and Letter Requesting Dispute Resolution
  - b. UB-92
  - c. EOB and example EOBs
  - d. Medical Records
  - e. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution
  - b. UB-92s
  - c. EOBs
  - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 9-20-02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 9-23-02. The response from the insurance carrier was received in the Division on 10-3-02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Additional Information submitted by Requestor is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 9-11-02:

"We are appealing the amount disallowed on the above mention [sic] claim. These charges are for **FACILITY FEES**, not professional fees. We feel that 24% paid on a left shoulder bicipital tenodesis is not fair or reasonable....Even though there is no real definition in the TWCC rules defining 'reasonable and necessary', we feel our medical services fees are 'fair and reasonable' as outlined in the Texas Labor Code. Our facility's

methodology is to bill only the supplies, medications, equipment, operating room and recovery time that were used during the surgery.... (Carrier) has unfairly reduced our bill when other workers' compensation carriers have established that our charges are fair and reasonable because they are paying 85%-100% of our billed charges."

2. Respondent: Letter dated 10-3-02:  
"ACCORDING TO RULE 134.401 (a) (4), NO FEE EXISTS FOR AMBULATORY SURGICAL CARE, AND SERVICES ARE TO BE PAID AT A FAIR AND REASONABLE RATE UNTIL THE ISSUANCE OF A FEE GUIDELINE....THE CARRIER, IN DETERMINING WHAT CONSTITUTES A 'FAIR AND REASONABLE RATE' DID CONSIDER THE MEDICARE, PPO AND HMO PAYMENTS, AND REVIEWED THE COMMISSION'S OWN GUIDELINES FOR ACUTE CARE. ACUTE CARE GUIDELINES STATE THAT \$1118.00 IS A VALID REIMBURSEMENT FOR A FULL DAY OF INPATIENT CARE, OR APPROXIMATELY 24 HOURS. BY DEFINITION, OUTPATIENT OR AMBULATORY SURGICAL SERVICES ARE THOSE THAT REQUIRE LESS THAN 90 MINUTES ANESTHESIA TIME AND LESS THAT [sic] FOUR HOURS OF RECOVERY. THIS MEANS THE PATIENT RECEIVES CARE FROM THE FACILITY FOR 1/4<sup>TH</sup> OF THE TIME OF BEING IN AN INPATIENT SETTING FOR A FULL DAY, AND THE FACILITY IS PAID AT THE **EQUIVALENT OF A ONE DAY INPATIENT STAY. THE ACUTE CARE FEE GUIDELINES WERE USED AS A CONSIDERATION IN DETERMINING REIMBURSEMENT – HOWEVER, THIS DOES NOT MEAN THAT INPATIENT GUIDELINES WERE APPLIED TO THIS SERVICE.** THE CARRIER HAS CONSISTENTLY APPLIED THIS REIMBURSEMENT RATIONALE FOR ALL A.S.C. SERVICES PROVIDED IN 2001."

#### IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 8-23-01.
2. The carrier denied the billed services as reflected on the EOB as, "M – IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE".
3. The Requestor billed the Respondent \$4,755.09.
4. The Respondent paid \$1,118.00.
5. The Requestor is seeking additional reimbursement of \$3,637.09.
6. The services provided by the Requestor include such items as anesthesia and lab services, pharmaceutical products, medical and surgical supplies, sterile supplies and EKG.

## V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgical center. Pursuant to Rule 133.307 (g) (3) (D), the requestor must provide "...documentation that discusses, demonstrates and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement ..." The provider has submitted additional reimbursement data: example EOBs from other carriers for charges billed for the same or similar procedure.

Per Rule 133.304 (i), "When the insurance carrier pays a health care provider for treatment(s) and/or service(s) for which the Commission has not established a maximum allowable reimbursement, the insurance carrier shall:

1. develop and consistently apply a methodology to determine fair and reasonable reimbursement amounts to ensure that similar procedures provided in similar circumstances receive similar reimbursement;
2. explain and document the method it used to calculate the rate of pay, and apply this method consistently;
3. reference its method in the claim file; and
4. explain and document in the claim file any deviation for an individual medical bill from its usual method in determining the rate of reimbursement."

The response from the carrier shall include, per Rule 133.307 (j) (1) (F), "... if the dispute involves health care for which the Commission has not established a maximum allowable reimbursement, documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable rate of reimbursement in accordance with Texas Labor Code 413.011 and §133.1 and 134.1 of this title;"

The carrier asserts that EOBs do not constitute a pattern substantiating fair and reasonable. While the carrier has indicated that it does consider Medicare, PPO and HMO payments and utilizes the Commission's own guidelines for acute care in its methodology, they have failed to meet the requirements of Rule 133.304 (i). TWCC Rule 134.401 (a) (4) indicates, ambulatory/outpatient surgical care is not covered by the Acute Care Inpatient Hospital Fee Guideline and as such cannot be utilized in determining reimbursement for an ASC. The Carrier has failed to support that their \$1,118.00 reimbursement reflects a fair and reasonable reimbursement. The payment amount appears to reflect a payment equal to that reimbursed in an acute care setting. The Carrier has failed to expand on how their consideration of Medicare, PPOs and HMOs has contributed to the amount reimbursed.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine, based on the parties' submission of information, who has provided the more persuasive evidence of what is a fair and reasonable rate. As the requestor, the health care provider has the burden to provide documentation that "...discusses, demonstrates, and justifies

that the payment being sought is fair and reasonable rate of reimbursement....” pursuant to TWCC Rule 133.307 (g) (3) (D). The requestor has provided some documentation to support their position that the amount billed is fair and reasonable. The Respondent has failed to comply with Rule 133.304(i). Therefore, additional reimbursement of **\$2,923.83** is recommended. The example EOBs reviewed reflected an average reimbursement of 85% of the billed amount. (\$4,041.83 represents 85% of the billed amount - \$1,118.00 already paid = \$2,923.83).

**REFERENCES:** The Texas Workers’ Compensation Act & Rules: Sec 413.011 (d); Rule 133.304 (i); Rule 133.307 (g) (3) (D), and (j) (1) (F); Rule 134.401 (a) (4).

The above Findings and Decision are hereby issued this 17<sup>th</sup> day of April 2003.

Lesa Lenart  
Medical Dispute Resolution Officer  
Medical Review Division

LL/ll

## **VI. ORDER**

Pursuant to Sections 402.042, 413.016, 413.031, and 413.019 the Medical Review Division hereby ORDERS the Respondent to remit **\$2,923.83** plus all accrued interest due at the time of payment to the Requestor within 20 days receipt of this order.

This Order is hereby issued this 17<sup>th</sup> day of April 2003.

Carolyn Ollar  
Medical Dispute Resolution Officer  
Medical Review Division

CO/ll